United States Department of Labor Employees' Compensation Appeals Board

J.S., (deceased), Appellant)	
)	
and)	Docket No. 13-1829
)	Issued: February 27, 2014
DEPARTMENT OF AGRICULTURE,)	-
INSPECTION OPERATIONS PROGRAM,)	
Minneapolis, MN, Employer)	
	_)	

Appearances: Elliot Andalman, Esq., for the appellant Office of Solicitor, for the Director

ORDER GRANTING MOTION TO REMAND AND CANCEL ORAL ARGUMENT

Before:

RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On August 1, 2013 the employee, through his attorney, filed an application for review of a February 4, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the termination of appellant's wage-loss compensation benefits on the grounds that he refused an offer of suitable work. Oral argument was requested. The Board docketed the appeal as No. 13-1829. An oral argument was scheduled for March 6, 2014 at 11:00 a.m.

By motion dated February 19, 2014, the Director of OWCP requested that the Board set aside the February 4, 2013 decision, cancel the oral argument scheduled for March 6, 2014 and remand the case. The Director noted that the February 4, 2013 decision considered only some of the employee's accepted and nonemployment-related conditions, and did not properly consider whether the position was available in the employee's commuting area. By letter dated February 24, 2014, the employee's representative consented to the Solicitor's motion to remand the case and cancel the oral argument scheduled for March 6, 2014.

¹ It was noted that the employee passed away on October 21, 2013 and a substitution of Personal Representative of the Estate would be filed as soon as the Letter of Representative was received from the Probate Court.

The Board has duly considered the matter and concludes that upon the Director's motion and the consent of the representative of record, the February 4, 2013 OWCP decision is set aside, the oral argument scheduled for March 6, 2014 is cancelled, and the case is remanded for further development. Following any further development deemed necessary, OWCP shall issue a de novo decision on the merits.

IT IS HEREBY ORDERED THAT the February 4, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: February 27, 2014

Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board